IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO.1316 of 2001
(Old No.1068 of 1992)

Sanjay Thapa S/o Sri Kishan Singh Thapa,
R/o Vill.Ladpur, P.S. Raipur, Distt. Dehradun.
.....Appellant

Versus

The State .....Respondent

Dated: November 22, 2007

Sri Lokendra Dobhal, learned counsel for the appellant
Sri M.A. Khan, learned brief holder for the State

HON. DHARAM VEER, J.

This appeal, preferred by the appellant u/s 374(2) of Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 30.04.1992/6.5.1992 passed by Ist Additional Sessions Judge, Dehradun in Sessions Trial No.156 of 1992, State v. Sanjay Thapa, whereby the learned Ist Addl. Sessions Judge has convicted the appellant under Section 511 r/w Section 376 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and sentenced him for five years R.I.

2. In brief, the prosecution case is that on 29.3.1991 at about 2:30 P.M., the complainant Suresh Kumar Verma had sent his daughter Preeti Verma to bring the water for him from the Government Water Works tap. After sometime she returned weeping and when the complainant asked her to tell him the matter on account of which she was weeping, Km. Preeti Verma told him that the appellant Sanjay Thapa had attempted to commit rape on her by pressing her mouth in the nearby *Khandhar.* She also stated that the appellant had made her naked and had also discharged his semen and had made dirty her feet. She also told her father that the appellant had washed her feet by the water which she was bringing for her father. The appellant also told the victim Km. Preeti Verma to not to disclose the fact to anyone. With the aforesaid

allegations, Suresh Kumar Verma lodged the written report Ex.Ka-1 at P.S. Raipur, Distt. Dehradun on 29.3.1991 at 15.35 hours. On the basis of this report, Head Constable Samar Pal Singh prepared the Chik FIR, i.e. Ex.Ka-5. The entry was also made in the G.D., the carbon copy of G.D. is Ex.Ka-6. The investigation of the case was entrusted to Sub-Inspector Veer Pal Singh. The victim Km. Preeti Verma was also medically examined by the Medical Officer, Women Hospital, Dehradun on 29.3.1991 at 11:30 P.M. and a medical report was also prepared i.e. Ex.Ka-9. According to the medical report it came out that: -

> *"The breasts of victim Preeti Verma had not developed; there were no axillary and pubic hairs; no mark of injury on private or any part of the body; hymen intact; vagina does not admit even the little finger."*
>
> The doctor also referred Km. Preeti Verma for her x-ray of knee, ankle, wrist and elbow joints in order to determine her age. The vaginal smear of the victim was also sent for chemical examination.

In the X-ray report of the victim Km. Preeti Verma i.e. Ex.Ka-8, it came out as under: -

> *"Epiphysis around wrist joint have not fused with their shafts; seven carpal bones are present; epiphysis around knee and ankle joints have not yet fused with their shafts."*
>
> According to the medical officer, no spermatozoa were seen. The age of the girl was below 10 years and she could not give any definite opinion about the rape.

3. During the course of the investigation, the I.O. has taken the underwear of victim Km. Preeti Verma into possession and prepared a Fard, i.e. Ex.Ka-2. The appellant was also arrested by the I.O. on the same day i.e. 29.3.1991

and his underwear was also taken into possession and a Fard was prepared, i.e. Ex.Ka-4. In the underwear of the appellant, spots of semen were visible. The I.O. also inspected the place of occurrence and prepared the site plan of the occurrence, i.e. Ex.Ka-3. The underwears of the appellant as well as underwear of victim Km. Preeti Verma were sent for chemical examination. The report after chemical examination was submitted by the Medical Officer i.e. Ex.Ka-10. In the report, it was stated that spermatozoa were found on the underwear of victim Km. Preeti and also on the underwear of appellant Sanjay Thapa. The I.O. during the course of investigation recorded the statements of the witnesses and after completing the investigation, he has submitted the charge sheet in the court i.e. Ex.Ka-7.

4. Learned Special Magistrate, CBI (First), Dehradun has committed the case to the court of Sessions on 30.10.1991 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C. The case was transferred for hearing and disposal of the trial to the court of Ist Additional Sessions Judge, Dehradun by Sessions Judge, Dehradun.

5. On 10.12.1991, Ist Addl. Sessions Judge, Dehradun framed the charge against the appellant Sanjay Thapa u/s 363 IPC and u/s 511 IPC r/w Section 376 of IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined P.W.1 Suresh Kumar, complainant of the case, P.W.2 Km. Preeti Verma, victim and P.W.3 S.I. Veer Pal Singh, I.O. of the case.

7. Thereafter, the statement of the appellant-Sanjay Thapa was recorded u/s 313 of Cr.P.C. who denied the allegations made against him and stated that he has been falsely implicated. However, he had not produced any oral or documentary evidence.

8. After appreciating the evidence on record and hearing learned counsel for the parties, the learned Ist Additional Sessions Judge, Dehradun vide his judgment and order dated 30.4.1992/06.05.1992 convicted the appellant-Sanjay Thapa under Section 511 IPC r/w Section 376 IPC and sentenced him for five years R.I. Against the said judgment and order, the appellant has preferred the present appeal.

9. I have heard Sri Lokendra Dobhal, learned counsel for the appellant and Sri M.A. Khan, learned brief holder for the State and perused the entire material available on record.

10. To prove its case, the prosecution has examined P.W.1 Suresh Kumar who has stated in his statement that Preeti Verma is his daughter and the appellant Sanjay Thapa was known to him who is a tenant near his shop. The said incident took place on 29.3.1991 at 2:30 P.M. when he asked his daughter, who was 9 years old at that time, to fetch the water from the Government Water Works tap. After lapse of about half an hour, Km. Preeti came while weeping and when he asked her to tell him the matter on account of which she was weeping, Preeti told him that the appellant Sanjay Thapa had attempted to commit rape on her by pressing her mouth in the nearby *Khandhar.* His daughter also told him that the appellant made her naked and he also become naked by himself and put his male organ at her vagina and had also discharged his semen and had made dirty her feet. She also told him that the appellant had washed her feet by the water which she was bringing for him. Thereafter he tried to get the appellant Sanjay Thapa but he could not get him. After that he had lodged the report of the said incident in the Police Station, Raipur and that report is Ex.Ka-1. The appellant was also arrested on the same day. The I.O. had taken the underwear of his daughter in his possession and prepared a Fard i.e. Ex.Ka-2. He has identified that underwear in the court as Ex.1. This witness was cross-examined at length by the

defence counsel at length but nothing has come out in his evidence which may create any doubt in his evidence. The evidence of this witness is reliable, believable and trustworthy.

11. P.W.2 is Km. Priti who has stated her age in the court to be about 9 years. She has stated in her statement that the appellant Sanjay Thapa was known to her who was present in the court on that day when her statement was recorded and he is the resident of the *Mohalla.* There were days of summer and her father had asked her to fetch the water from the Government Water Works tap. When she was coming back after taking the water, at that time appellant Sanjay Thapa was hidden in the bushes. Then the appellant pressed her mouth and took her to a *Khandhar.* The appellant made her naked and he also become naked by himself and put his male organ at her vagina and had also discharged his semen and had made dirty her feet. She also told her father that the appellant had washed her feet by the water which she was bringing for her father. He has also told her to not to disclose this incident to her parents. After that she narrated the entire incident to her father. She has further stated that the appellant had attempted to commit rape with her forcibly. After that she was medically examined by the doctor and on the date of incident, her age was about 8 years. This witness was also cross-examined at length by the defence counsel at length but nothing has come out in her evidence which may create any doubt in her evidence. The evidence of this witness is also reliable, believable and trustworthy.

12. P.W.3 is S.I. Veer Pal Singh, who is the I.O. of the case, has stated in his statement that in the mouth of March, 1991, he has posted as S.I. in the P.S. Raipur. The investigation of this case was entrusted to him. On the same day he visited the place of occurrence and prepared the site pan i.e. Ex.Ka-3. On the same day, the appellant was also arrested by him and underwear of the appellant was taken

into possession and a Fard was prepared i.e. Ex.Ka-4. Head Constable Samar Pal Singh was posted with him at that time and he has identified his signatures and he had seen him while reading and writing and on the basis of written report Ex.Ka-1, Head Constable Samar Pal Singh Prepared the Chik FIR i.e. Ex.Ka-5. The entry was also made in the G.D., the carbon copy of G.D. is Ex.Ka-6. During the course of investigation, he recorded the statements of the witnesses. He has also stated that the charge sheet of the case was submitted by S.I. Devendra Singh, i.e. Ex.Ka-7.

13. After that the statement of the appellant was recorded u/s 313 Cr.P.C. who has denied the allegations made against him and has stated that he has been falsely implicated. However, he had not produced any oral or documentary evidence in his defence.

14. Sri Lokendra Dobhal, learned counsel for the appellant has submitted that the prosecution has not proved its case against the appellant u/s 511 IPC r/w Section 376 IPC beyond reasonable doubt. The argument advanced by learned counsel for the appellant is not sustainable in the eye of law as it is proved from the statement of P.W.2 Km. Preeti Verma, who was about 8 years of age at the time of incident, that when she was coming back after taking the water, at that time appellant Sanjay Thapa was hidden in the bushes. Then, the appellant pressed her mouth and took her to a *Khandhar.* The appellant made her naked and he also become naked by himself and put his male organ at her vagina and had also discharged his semen and had made dirty her feet. Thereafter, the appellant had washed her feet by the water which she was bringing for her father. The appellant also told her to not to tell this incident to her parents. After that she came back to her house and narrated the entire incident to her father. The victim Km. Preeti was 8 years of age at the time of incident and there is reason to disbelieve her testimony. The statement of

P.W.2 Km. Preeti is also corroborated by the medical report Ex.Ka-9 as well as from the X-ray report i.e. Ex.Ka-8. The genuineness of the medical report i.e. Ex.Ka-9 and X-ray report i.e. Ex.Ka-8 was also admitted by the defence counsel in the trial court. Ex.Ka-10 is the report of Scientific Officer which also corroborates the statement of the victim Km. Preeti as the underwears of appellant and victim were sent for chemical examination and after the chemical repot, it came out that in both the underwears, human spermatozoa was found. The evidence of P.W.2 Km. Preeti is natural, believable and trustworthy and there is no ground to disbelieve her testimony. Furthermore, the evidence of P.W.2 Km. Preeti is also supported by the evidence of P.W.1 Suresh Kumar Verma, who is the father of the victim who has stated in his evidence that on 29.3.1991 at 2:30 P.M. he asked his daughter to fetch the water from the Government Water Works tap. After lapse of about half an hour, Preeti came while weeping and when he asked her to tell him the matter on account of which she was weeping, Preeti told him that the appellant Sanjay Thapa had attempted to commit rape on her by pressing her mouth in the nearby *Khandhar.* She also told him that the appellant made her naked and he also become naked by himself and put his male organ at her vagina and had also discharged his semen and had made dirty her feet. She also told him that the appellant had washed her feet by the water which she was bringing for him. After that the victim Km. Preeti along with her father Suresh Kumar Verma had gone to lodge the FIR and the report of the said incident was lodged in the Police Station, Raipur, Distt. Dehradun by Suresh Kumar Verma on 29.3.1991 at 15:35 hours, that report is Ex.Ka-1. The distance of the police station is 2½ Kms. from the place of occurrence and the incident was said to be taken place on 29.3.1991 at 2:30 P.M.

15. Thus, from the evidence discussed above, it is proved by the prosecution beyond reasonable doubt that the appellant Sanjay Thapa has attempted to commit rape with Km. Preeti, who was a minor girl aged about 8 years at the time of incident, forcibly and against her wish on 29.3.1991 at 2:30 P.M. at Vill.Ladpur, P.S. Raipur, Distt. Dehradun. In this way, the prosecution has fully proved its case against the appellant beyond reasonable doubt and I do not find any illegality or irregularity in the judgment and order dated 30.4.1992/6.5.1992 passed by Ist Additional Sessions Judge, Dehradun and I am in full agreement with the said judgment and order dated 30.4.1992/6.5.1992.

16. For the reasons recorded above, the appeal is devoid of merits and is hereby dismissed. The judgment and order dated 30.4.1992/6.5.1992 passed by Ist Additional Sessions Judge, Dehradun is hereby confirmed.

17. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

Rajeev Dang